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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 74-5218

PAUL O. CRUMP,

Petitioner,

vs.

ELZA BRANTLEY, Warden,

Respondent.

(ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT)

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Appellate Court of Illinois, First District (App. A of Petition), is reported at 17 Ill. App. 3d 318, 307 N.E. 2d 651.

JURISDICTION

Respondent contends that this Court does not have jurisdiction because the state court decision rests on adequate, independent state grounds. (See the Argument section of this Brief).

QUESTION PRESENTED

Whether the Illinois Habeas Corpus Act is the proper vehicle (1) for petitioner to challenge the refusal of the Parole Board to consider him for parole and (2) for determining whether the petitioner is being mistreated by prison officials.

STATUTE INVOLVED

Ill. Rev. Stat. Ch. 65, § 22 (1973):

§22. Causes for discharge when in custody on process of court

If it appear that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

1. Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum or person.

2. Where, through the original imprisonment was lawful, yet, by some act, omission or event which has subsequently taken place, the party has become entitled to his discharge.

3. Where the process is defective in some substantial form required by law.

4. Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest to issue.

5. Where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him.

6. Where the process appears to have been obtained by false pretense or bribery.

7. Where there is no general law, nor any judgment, order or decree of a court to authorize the process if in a civil suit, nor any conviction if in a criminal proceeding. No court or judge, on the return of a habeas corpus, shall, in any other matter, inquire into the legality or justice of a judgment or decree of a court legally constituted.

STATEMENT OF THE CASE

Petitioner was twice convicted of the murder of the chief of plant guards at Libby, McNeill & Libby in the Chicago Stockyards during a robbery on March 20, 1953. His first conviction was reversed by the Supreme Court of Illinois in *People* v. *Crump*, 125 N.E. 2d 615, 5 Ill. 2d 251 (1955). That reversal was principally predicated on the ground that an accomplice witness was a drug addict, and the defense had been precluded from developing that fact on cross examination. Petitioner's second conviction on this murder charge and his death sentence were affirmed in *People* v. *Crump*, 147 N.E. 2d 76, 12 Ill. 2d 402 (1957). On August 1, 1963, the Governor of Illinois commuted petitioner's sentence from death to imprisonment for a term of 199 years without parole. *People ex rel. Crump* v. *Brantley*, 307 N.E. 2d 651, 652, 17 Ill. App. 3d 318 (1974).

Petitioner filed a habeas corpus petition in the Circuit Court of Cook County on November 1, 1971. (Record) (R. 03) At this time he also petitioned for appointment of counsel and for leave to proceed in forma pauperis. (R. 07) The appointed counsel for petitioner entered an appearance on November 15, 1971 (R. 01 and 09), and an amended petition for a writ of habeas corpus was filed on March 29, 1972. This amended petition sought petitioner's immediate release because (1) the sentence of 199 years without parole was illegal and (2) the petitioner was being mistreated by prison officials. (R. 023-26) Respondent's motion to dismiss was sustained on May 10, 1972. (R. 050) Also on that date the appearance of an additional counsel for the plaintiff was filed. (R. 053)

The dismissal of the petition was affirmed in *People ex rel. Crump* v. *Brantley*, 307 N.E. 2d 651, 17 Ill. App. 3d 318 (1974). Petitioner was also represented by two counsel during this appeal. *People ex rel. Crump* v. *Brantley*, *supra*, at 652. The court framed the issues as follows:

> 1) whether the refusal further to consider parole is the proper subject matter for a petition for a writ of habeas corpus, and 2) whether the transfer of the petitioner to the Psychiatric Division of the Illinois State Penitentiary and other alleged mistreatment by prison officials can properly be raised in a habeas corpus petition.

The Supreme Court of Illinois denied a petition for leave to appeal in this case on May 29, 1974. (App. B of Petition) Petitioner is requesting this court to enable him, under the Illinois Habeas Corpus Act (Ill. Rev. Stat. ch. 65, §§ 1-39 (1973)), (1) to have a hearing on his allegations of mistreatment by prison administrators and (2) to force the Parole Board to consider him for parole. Respondent contends that this Court does not have jurisdiction because the state court decision rests on adequate, independent state grounds. (See the Argument section of this Brief).

ARGUMENT

THIS COURT DOES NOT HAVE JURISDICTION BECAUSE THE DECISION OF THE STATE COURT RESTS ON ADEQUATE, INDEPENDENT STATE GROUNDS.

Because the petitioner chose an improper method of raising the issues, the substantive questions as to (1) whether the Parole Board must consider the petitioner for parole and (2) whether the petitioner is being mistreated by prison officials have not been decided by the Illinois courts. While the petitioner is entitled to raise those issues, he is not entitled to ignore Illinois law in so doing.

A.

The Illinois Habeas Corpus Act Provides For The Raising Of Jurisdictional Questions.

The Illinois Habeas Corpus Act provides that its remedy is appropriate only where the court "exceeded the limit of its jurisdiction," or where, though the original imprisonment was lawful, a subsequent event has entitled the party to his discharge. Ill. Rev. Stat. ch. 65, § 22 (1973); *People ex rel. Johnson* v. *Pate*, 265 N.E. 2d 144, 146-47, 47 Ill. 2d 172 (1970), *cert. denied*, 91 S. Ct. 1679, 402 U.S. 976 (1971); *People ex rel. Jefferson* v. *Brantley*, 253 N.E. 2d 378, 380-81, 44 Ill. 2d 31 (1969), *cert. denied*, 91 S. Ct. 68, 400 U.S. 834 (1970). The Supreme Court of Illinois has held that even though there is a claim of a denial of constitutional rights, habeas corpus is not available to review claims of a nonjurisdictional nature. *Peo-*

ple ex rel. Shelley v. *Frye*, 246 N.E. 2d 251, 252, 42 Ill. 2d 263 (1969); *Stachulak* v. *Coughlin*, 369 F. Supp. 628, 630 (N.D. Ill. 1973); *United States ex rel. Dereczinski* v. *Longo*, 368 F. Supp. 682, 686 (N.D. Ill. 1973).

B.

The Petitioner Has Chosen An Improper Method For Challenging The Legality Of The Commutation Of His Sentence, But In Any Event That Commutation Is Legal.

The petitioner is not being considered for parole because a former Governor of Illinois commuted his death sentence to imprisonment for 199 years without parole. *People ex rel. Crump* v. *Brantley*, *supra*, at 652. The Governor acted under section 13, article 5 of the Constitution of Illinois (1870).[1] The pardoning power of the governor in the 1870 constitution was upheld in *People ex rel. Brundage* v. *LaBuy*, 120 N.E. 537, 538, 285 Ill. 141 (1918).

The authority to grant mercy has been held to imply the authority to make the granting of mercy conditional. *United States* v. *Klein*, 80 U.S. (13 Wall.) 128, 142 (1871); *Ex Parte Wells*, 59 U.S. (18 How.) 307 (1855). It is irrelevant that the term or conditions fixed by the governor is one that a trial court has no authority to impose. *People ex rel. Smith* v. *Jenkins*, 156 N.E. 290, 292, 325 Ill. 372 (1927). Thus, because the petitioner, after his commutation, is held by command of the Governor, the section on parole eligibility of the Unified Code of Corrections (Ill. Rev. Stat. ch. 38, § 1003-3-3 (1973)) has no application to him. The parole eligibility section applies to inmates sentenced under section 1005-8-6, which does not include an

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1. The 1970 constitution gives the governor a similar pardoning power in article 5, section 12.

inmate held by command of the Governor. *People ex rel. Johnson* v. *Murphy*, 100 N.E. 980, 257 Ill. 564 (1913).

Because the Governor acted properly when commuting petitioner's sentence, petitioner's rights under the due process and equal protection clauses have not been violated. The procedures followed by the Governor and the result achieved, the sparing of petitioner's life, comport with the laws of Illinois and of the United States. The class in which petitioner is now found is that including those persons whose sentences have been commuted by Illinois governors. This class will be small in number because the commutation power is not often used, but the size of a class does not mean that the classification is unreasonable.

Petitioner is not without a remedy in the State courts with respect to the refusal of the Parole Board to consider him for parole. Because the Illinois Habeas Corpus Act provides for the raising of jurisdictional questions, that Act is not the proper remedy with respect to the parole issue in the instant case. The proper and available remedy under State law would be a mandamus action directed against the Illinois Parole and Pardon Board. Ill. Rev. ch. 87, §§ 1-12 (1973); *People ex rel. Crump* v. *Brantley*, *supra*, at 652; *People ex rel. Beadle* v. *Illinois Parole and Pardon Board*, 239 N.E. 2d 782, 40 Ill. 2d 290 (1968). Petitioner is also eligible for further acts of clemency by the present or future governors of Illinois.

C.

The Illinois Habeas Corpus Act Is Not A Proper Vehicle For Determining Whether The Petitioner Is Being Mistreated By Prison Officials.

Because the Illinois Habeas Corpus Act provides for the raising of jurisdictional questions, that Act is not a proper remedy with respect to the alleged mistreatment issues in the instant case. But the petitioner is not without a remedy. As the appellate court noted in *Crump*, the Supreme Court of Illinois has held that a protest of a transfer to the Psychiatric Division is not a proper subject matter for a writ of habeas corpus. *People ex rel. Crump* v. *Brantley, supra*, at 653, citing *People ex rel. Willis* v. *Department of Corrections*, 282 N.E. 2d 716, 717, 51 Ill. 2d 382 (1972). But, petitioner can challenge his transfer to the Psychiatric Division and the Psychiatric Division review procedures under the grievance procedures of the Unified Code of Corrections. Ill. Rev. Stat. ch. 38, § 1003-8-8 (1973). In addition, petitioner can utilize the federal courts by means of a petition for federal habeas corpus or a civil rights action. 28 U.S.C. §§ 2241-55; 42 U.S.C. §§ 1981-2000h-6. The Department of Corrections grievance procedure and the federal remedies are also available to the petitioner with respect to his other allegations of mistreatment. (Petition at 12)

D.

This Court Does Not Have Jurisdiction.

The Illinois Habeas Corpus Act is a reasonable rule of state procedure, which has been applied consistently and which is not being used to evade vindication of federal constitutional rights. Here, the decision of the appellate

court from which review is sought, treated only the propriety of presenting the alleged claims by way of habeas corpus. The court expressed no opinion as to the validity of petitioner's substantive claims. Therefore, no federal question is before the Court, and the petition should be dismissed. *Wolff* v. *North Carolina*, 364 U.S. 177, 196 (1960).

In order to establish jurisdiction the petitioner must demonstrate that the state grounds cannot account for the decision below. *Durley* v. *Mayo*, 351 U.S. 277, 281 (1956); *McGoldrick* v. *Gulf Oil Co.*, 309 U.S. 2, 3 (1940). In *Stembridge* this Court stated, "Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment." *Stembridge* v. *Georgia*, 343 U.S. 541, 547 (1952). In *Nickel* this Court further stated, ". . . when . . . there can be no pretence that the Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong." *Nickel* v. *Cole*, 256 U.S. 222, 225 (1921).

In at least two previous cases, this Court has refused to take jurisdiction where Illinois courts had determined that habeas corpus petitions filed in the state courts were not the proper remedy.[2] Although violations of constitutional

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2. The Illinois Habeas Corpus Act is significantly different from the federal writ of habeas corpus and from a federal civil rights action. 28 U.S.C. §§ 2241-55; 42 U.S.C. §§ 1981-2000h-6. Thus the cases cited in the petition that have been brought pursuant to those federal statutes are irrelevant to the case at bar. The petition confuses the fed-

rights were alleged, no federal questions were presented in these cases because the Court could not say that the state court decisions did not rest on an adequate nonfederal ground. *Woods* v. *Nierstheimer*, 328 U.S. 211 (1946); *White* v. *Ragen*, 324 U.S. 760 (1945). The instant case presents the same issue; and the same result, writ denied, should obtain.[3]

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eral and Illinois law to the extent that nowhere in the petition appears a single case dealing with the Illinois Act, upon which this action is predicated.

The only Illinois case cited in the petition and in the brief of the amicus curiae is *People ex rel. Weaver* v. *Longo*, 309 N.E. 2d 581, 57 Ill. 2d 67 (1974). In *Weaver*, a mandamus action, a prisoner convicted and sentenced prior to the adoption of the Unified Code of Corrections was found to be eligible for parole under the new Code; this case, too, is completely irrelevant to the issue in *Crump*.

3. Although not cited in the petition, the case of *Schick* v. *Reed*, 483 F.2d 1266 (D.C. Cir. 1973), *cert. granted*, 94 S. Ct. 1968 (1974), should be distinguished from *Crump*. The *Schick* case raises the question of whether the President can legally commute a military man's death sentence to life imprisonment without the possibility of parole; however, *Schick* does this in a procedurally proper manner. In contrast, the petitioner here seeks to raise this issue under an Illinois statute that is clearly unavailable and has been consistently interpreted to be unavailable for the presentation of claims of this type.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari be denied.

Respectfully submitted,

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